



Appraisal of Ethnographic-Comparative Research Technique in Research Methodology in Law

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ABSTRACT

The choice of a legal subject of research and its intended outcome or the deficiency it intends to cure, depends largely on the approach given to it. Traditional approaches to research in law have tended to become almost exclusively doctrinal with little or no room for the use of data and other materials arising from field work. The question then arises as to what kind of legal research technique and scientific methodology is most appropriate for the legal researcher. Thus, the aim of any legal research will determine the particular research technique to employ. A legal researcher may choose to employ the doctrinal or non-doctrinal legal research method. However, this paper is restricted to ethnographic-comparative legal research technique. An appraisal is done on the ethnographic-comparative technique. This paper reveals the advantages and disadvantages as well as suggestions that will help a legal researcher in choice of research technique suitable for his work. Wrong choice will lead to a frustrating end. In an era of multidisciplinary approaches to research and teaching as well as reliance on data for planning and national development, it is pertinent for a legal researcher to understand research methodology before embarking on research work.

Keywords: Legal research, Ethnographic-comparative techniques, Opera Citato

1. INTRODUCTION

Legal research as every other field of human endeavor has a pattern of performance which is commonly referred to as research method. Method is the manner of proceeding adopted by legal researchers in their bid to gain systematic, reliable and valid knowledge about legal phenomena.¹

The science of method is called methodology. Methodology denotes the systematic and logical study of the general principles concerned in the broadest sense with the questions of how knowledge is established and how others can be convinced that the knowledge is correct.²

There is continuous innovation and improvement in the law curriculum. New ideas spring up, questions are raised with a view to finding answers to them. These are done with the believe that we live in an organized world, that the world is rational that there is such a thing as cause and effect but the cause comes before the effect and that knowledge can be discovered and added to, that problems are soluble and truth is real but absolute truth is unattainable. There is no foreseeable end.³

In quest for knowledge, we engage in continuous search for reasoned and clearly expounded answers to the “why” “how” “where” and “why not” in our respective discipline. Legal education exists because

¹Gasiokwu M.O.U, Legal Research and Methodology, the A-Z of Writing Theses and Dissertations in a Nutshell; Chenglo Ltd, Uwani, Enugu Nigeria (2006) p. 36

²Martin, B., Sociological Research Methods: An Introduction (London; Macmillan Press Ltd, 1977) P. 4

³James, C., Coping with Research, The complete Guide for Beginners (London: Williams Heinemann Ltd 1984) P.3

there is the body of rules called law which regulates the relationship between the different strata of the Society. Thus, if the numerous laws were perfect, if social control was automatic, legal scholarship like the state of the Marxists could be left to wither away. But our laws are not perfect and final and cannot be so in a dynamic society; they are not always even intelligible and if intelligible, not always intelligently made.⁴

Legal research is a complex skill.⁵ Research is defined as a systematic search for facts or scientific investigation of the principles and facts of any subject based on original and first hand study of authorities or experiment.⁶ Most often, topics requiring field work and the application of empirical research techniques are avoided.⁷

2. The Ethnographic-Comparative Techniques

Ethnographic-comparative techniques are techniques in empirical legal research. Legal research has a pattern of performance which is commonly referred to as research method. A lawyer or student has to research to find out how law should be interpreted.

Legal research is the search for truth and knowledge. In legal research, knowledge is added to, problems are solved, inadmissible viewpoints are refuted and some scholarly conclusions are formulated. Legal education, like all other forms of academic training is not static⁸. With regards to empirical data collection, it has been noted thus

In terms of gross division, there are only three methods of
Obtaining data in social research; one can ask people questions;
One can observe the behavior of persons, groups or organizations
and their products outcomes; or one can utilize existing records or
data already gathered for purposes other than one's own research.⁹

There are numerous laws that regulate the relationships between the different strata of the Society but not devoid of challenges. Thus, if the numerous laws were perfect, if social control were automatic, legal scholarship could be left to wither away but our laws are not perfect and final and cannot be so in a dynamic Society, they are not even intelligible and if intelligible not always intelligently made.¹⁰

Consequently, further inquiry into law is imperative. The Cambridge edition of Encyclopedia Britannica 1911 points out that etymologically, research is from "CHERCHER" to research and "CIRCARE", to go round in a circle". From this derivation, it becomes easy to agree with Rajkumari Agrawala that research is a continuum.¹¹ The Categories, Methods and Strategies adopted for any particular research project will depend on the subject-matter. According to a legal scholar; "*If we dig in the garden, we use a spade. If we search for oil, we employ a rock-drill. In other words, the choice of tools depends on the depth to which we intend to probe.*"¹²

In most developing countries including Nigeria, legal research is mainly doctrinal. There is this feeling of apathy towards non-doctrinal legal research which would require data collected through empirical techniques. Legal research is not static phenomenon. Its techniques do not constitute a closed category. According to Mittal;

With the change in the nature of societal realities, the techniques
of research are bound to undergo change. This explains why there
is a movement from analytical Research to empirical research. A trend
of empirical research in social science the world over is evident.
Obviously, the study of law cannot escape this trend if law has to attain

its rightful place as a social science.¹³

Many of the problems which must concern lawyers and legal scholars cannot be studied in full perspective except through the co-operative effect of men trained in different disciplines.¹⁴ Wrong techniques may prevent an inspired researcher from spotting the new trials.¹⁵ The most important questions concern the impact of legal processes upon people, their values and institutions and how legal process may be made more effective instruments for achieving the good life.¹⁶ In this regard, there is a clearly discernible trend in the law curriculum to accept greater responsibility for basic or pure research.¹⁷

The Ethnographic- Comparative Techniques is concerned with the studying of the functions of the various cultural phenomena which are called the primitive societies that offer opportunities to observe legal behavior reduced to laboratory simplicity. The techniques of participant observation are most useful here. As Professor Hurst¹⁸ puts it, legal research has moved within very limited borders, relative to its proper field because it has not been grounded in ideas adequate to the intellectual challenge which the phenomena of legal order present.

Ethnographic studies show that informal laws function even where the so called legitimized authorities do not exist. Phenomena which could be defined by an observer as legal norms are treated by the people for whom these phenomena have validity as law. They are surrounded by institutions which according to general standards, would also be called legal institutions. With this method, it could be proved from evidence that law could exist and functions without the feature that would seem absolutely necessary. That is, compulsory sanctions enforced by legitimized authorities. It can also show that positive or written law has limited influence on human behavior.

A legal Scholar undertaking a non-doctrinal research typically takes either some aspects of the legal decision process or the people and Institutions supposedly regulated by law as the focus of his study. Because the approach of a legal scholar undertaking non-doctrinal research is much broader and the questions he ask are more numerous, the data necessary to attempt an answer is not ordinarily available in conventional legal sources. Hence, field work is usually required for this type of research.¹⁹

3. SOME LEGAL RESEARCH CITATION SIGNALS

A legal researcher must understand that legal research differs from other researchers. For an understanding and mastery of the language of the law, a good law dictionary is a necessity for the beginning student.²⁰ Citation signals are used to explain the meaning of some of the Latin signals which are often misused especially by students. Though in some jurisdictions, some citation signals are not used while they are accepted in other jurisdictions. Some of these signals are explained as follows.²¹

A. Supra

Supra means above, over, appearing above. It is used to refer to portions of the text or footnotes at previous pages, if it is being repeated or made reference to e.g 79. Supra, not 23 at 223.

¹³ Mittal, A., *Thought of Methodology* (1982) J.I.L.I at 712

¹⁴ Richard C.D., "Some Comments upon law and Behavioural Science Programme at Yale" 12 *Journal of Legal Education* 83, (1953-1960).

¹⁵ Ellinger, E.P and Keith, K. J., "Legal Research; Techniques and Ideas," (1982), 24 J.I.L.I pp. 214-215

¹⁶ Hurst, Research Responsibilities of University Law Schools, 10 J. (Legal Ed. 147,1957)

¹⁷ Alfred, F.C. (Ed.), *Proceedings of University of Michigan Conference on Aims and Methods of Legal Research*, 1957.

¹⁸ "The Role of Law in United States History", *Student Lawyer*, 4,6, December, (1961).

¹⁹ Ernest, M. J., *Some Current Trends in Legal Research*; Professor of Law, University of Florida (1963).

²⁰ Morris L. C., *Legal Research in a Nutshell*. St. Paul Minn: West Publ. Co., 1978. P.8

²¹ Gasiokwu M.O.U, n.1 Pp.158-171

B. Ibid

This is an abbreviation of *Ibidem* meaning at the same place e.g in the same book. There is also the word *Idem* typically abbreviated as *Id* which also means at the same place e.g in the same book. In legal writing, the abbreviation for *Idem*, *Id* is preferred to *Ibid*. for referring to previously cited reference; *Id* may therefore be used whenever a citation refers to an immediately preceding authority. Any variation between the previous and present footnotes must be indicated e.g Note 15 *Id* or 15. *Id* at 20.

C. Op. Cit.

This is an abbreviation of *Opera Citato* meaning in the work mentioned. This is used for referring to previously cited work but different page or volume when references to other works have intervened. *Op. Cit.* is usually preceded by the surname of the author of the cited work. E.g

I. Nwabueze, B.O., *The Presidential Constitution of Nigeria* Enugu; Nwamife Publi; 1982. P.10

II. Other references

III. Nwabueze, *Op. Cit.*; at 25

5. CONCLUSION

Ethnographic-Comparative techniques in empirical or non-doctrinal legal research help in highlighting the deficiencies in legal enactment and the problem of their implementation.

This can explain the followings:

- a. What type of law can be enacted
- b. The causative factors for the delay in administering justice
- c. Problem that arise because of the variation in the interpretations given by lawyers and;
- d. The underlying factors which affect the judgment by ascertaining the workload of judges, lawyers and other personnel in legal machinery.
- e. This technique can also assist in suggesting modifications in the existing system of judiciary, enforcement machinery and in the teaching and practice of law.
- f. Every legal research begins with a question or a problem of some sort. Thus, all legal research papers have formats that could be divided into three parts, namely; Preliminaries, Text and References.²² The aim of legal research is to discover answers to meaningful questions through the application of scientific procedures. Therefore when a piece of empirical research is to be executed, all the concepts in the research and all the important words used in the write up must be defined in terms of operations.
- g. Another advantage is that respondents may have greater confidence because of their anonymity and thus feel free to express views, which they fear might be disapproved of or might land them into trouble. Sometimes, the questionnaire places less pressure on the subject for immediate response. When the subject is given ample time for filling the questionnaire, he can consider each point carefully. Thus, obtaining responses through questions is the natural and most scientific way of ascertaining facts.

RECOMMENDATIONS

Empirical or non-doctrinal research is a research on the actual working of the law, unlike doctrinal research which is a research into law as it stands in the books. It is suitable in field work. Ethnographic-comparative research technique is recommended for a research work involving field work.

This research technique is recommended for a researcher who is seeking to;

- (i) Assess the impact of non-legal events such as economic development, growth of knowledge, technical changes upon legal decision processes;

²² Oluikpe, B.O.A., *Thesis Writing Form and Style*, Onitsha; Africa, (1980) P.2

- (ii) Identify and appraise the magnitude of the variable factors influencing the outcome of legal decision making; and
- (iii) Trace the consequences of the outcome of a legal decision making in terms of value, gains and deprivation for litigants, non-litigants and non-legal Institutions.

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